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Attorney for Defendant  
Nathaniel Gregory Williams

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**  
(HONORABLE DANA M. SABRAW, JUDGE)

UNITED STATES OF AMERICA,	)	Criminal Case No. 08cr-0092 (DMS)
	)	
Plaintiff,	)	Date: February 15, 2008
	)	Time: 11:00 A.M.
v.	)	
	)	<b>NOTICE OF MOTIONS AND MOTIONS</b>
NATHANIEL GREGORY WILLIAMS,	)	<b>FOR (1) DISCOVERY; AND</b>
	)	<b>2) TO FILE FURTHER MOTIONS</b>
Defendant.	)	
_____	)	

TO: Karen Hewitt, UNITED STATES ATTORNEY  
William Douglas Keehn, ASSISTANT UNITED STATES ATTORNEY

PLEASE TAKE NOTICE that on February , 2008, at 11:00 A.M., or as soon thereafter as counsel may be heard, defendant NATHANIEL GREGORY WILLIAMS, by and through his counsel Stephen P. White, will respectfully move the Court for an order to grant the motions as set forth below.

**MOTIONS**

Defendant NATHANIEL GREGORY WILLIAMS, by and through his counsel Stephen P. White, hereby moves this Court, pursuant to Rules 12 and 16 of the Federal Rules of Criminal Procedure, the *Jencks* Act (18 U.S.C. § 3500), *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, the Fourth, Fifth, and Sixth Amendments to the Constitution of the United States, and the general supervisory powers of this Court, for an Order compelling the Government to

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1 disclose, or in the case of tangible evidence, to produce for inspection and copying, all evidence  
2 and information in the possession, custody or control of the Government which may be favorable  
3 to the defendant, or material on the issue of guilt or innocence, or which could lead to material  
4 evidence, or evidence or information which could be useful in the examination of witnesses at  
5 trial; and for disclosure and inspection of the information requested in the attached memorandum  
6 of points and authorities.

7 Furthermore, pursuant to the Court's inherent supervisory power, defendant further moves  
8 this Court to allow defendant to file further motions on the grounds that other motions cannot  
9 be adequately addressed at this time due to the voluminous discovery in this case. It may be  
10 necessary to file additional motions at a later date. Therefore, it is requested that defendant be  
11 allowed to file further motions at a later date.

12 This motion is based upon this notice of motion, the accompanying memorandum of  
13 points and authorities, the records and files in the instant case, and on any and all other matters  
14 that may be presented to this Court prior to or at the time of the hearing of said motion.

15  
16 Dated: January 11, 2008

17  
18 s/Stephen P. White  
19 STEPHEN P. WHITE  
20 Attorney for Defendant  
21 NATHANIEL GREGORY WILLIAMS  
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UNITED STATES OF AMERICA,	)	Criminal Case No. 08cr-0092 DMS
	)	
Plaintiff,	)	Date: February 15, 2008
	)	Time: 11:00 A.M.
v.	)	
	)	<b>MEMORANDUM OF POINTS AND</b>
NATHANIEL GREGORY WILLIAMS	)	<b>AUTHORITIES IN SUPPORT OF</b>
	)	<b>MOTIONS: 1) FOR DISCOVERY, AND</b>
Defendant.	)	<b>2) TO FILE FURTHER MOTIONS</b>

Defendant NATHANIEL GREGORY WILLIAMS, by and through his counsel Stephen P. White, respectfully submits the following memorandum of points and authorities in support of his motions for discovery and to file further motions.

**I.**

**STATEMENT OF THE CASE**

Defendant Nathaniel Gregory Williams is charged in a two-count indictment with Importation of Cocaine, in violation of Title 21, United States Code, Section 952 and 960 and Possession of Cocaine Title 21, United States Code, Section 841 (a)(1) (Count 2); ; and Aiding and Abetting, in violation of Title 18, United States Code, Sections 2..

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1 **II.**

2 **DISCOVERY**

3 To preserve his rights and guard against undue prejudice due to delay, the defendant seeks  
 4 an order compelling discovery of the following material, and further seeks an order establishing  
 5 a discovery schedule in this case. Defendant requests full discovery pursuant to Rule 16 of the  
 6 Federal Rules of Criminal Procedure,<sup>1</sup> *Brady v. Maryland*, 373 U.S. 83 (1963), the *Jencks* Act  
 7 (18 U.S.C. § 3500), and the Fifth and Sixth Amendments of the United States Constitution. For  
 8 the purposes of Rule 16 discovery and *Brady* the prosecutor “will be deemed to have knowledge  
 9 of and access to anything in the possession, custody or control of any federal agency  
 10 participating in the same investigation of the defendant.” *United States v. Bryan*, 868 F.2d 1032,  
 11 1036 (9<sup>th</sup> Cir.), *cert. denied*, 493 U.S. 858 (1989). Defendant requests that discovery be  
 12 completed reasonably in advance of trial so that he can make use of the materials provided in his  
 13 defense. Defendant seeks discovery of the following:

14 **A. Statements of the Defendant.**

15 Pursuant to Rule 16(a)(1)(A), defendant requests full discovery concerning any statements  
 16 made by him. The rule requires disclosure of any statement of the defendant’s in the possession  
 17 of the government in any form. It also requires disclosure of any portion of any report or other  
 18 written record containing the substance of a statement by the defendant made to a known  
 19 government agent, and the substance of any other statement made by the defendant to a known  
 20 government agent that the government intends to use at trial for any purpose.

21 The government must disclose not only the substance of the defendant’s statement but  
 22 also the substance of the defendant’s response to *Miranda* warnings. If the government does not  
 23 inform counsel that the defendant invoked his right to remain silent or his right to counsel, the  
 24 conviction may be reversed. *United States v. McElroy*, 697 F.2d 459, 465 (2<sup>nd</sup> Cir. 1982). The  
 25 Advisory Committee Notes as well as the 1991 amendments to Rule 16 make it clear that the  
 26 government must reveal *all* the defendant’s statements, whether oral or written, regardless of

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27 <sup>1</sup>Unless otherwise indicated, all further rule references will be to the Federal Rules of Criminal  
 28 Procedure.

1 whether the government intends to introduce those statements.

2 **B. Request for Criminal Record, Prior Bad Acts, and Notice Under FRE 404(b).**

3 Defendant requests all evidence, documents, records of judgments and convictions,  
4 photographs and tangible evidence, and information pertaining to any prior arrests and  
5 convictions or any prior similar acts or prior bad acts of defendant. The defendant's prior  
6 criminal record must be produced under Rule 16(a)(1)(B). Evidence of prior similar acts or prior  
7 bad acts is discoverable under Rule 16(a)(1)(C), and Rules 404(b) and 609 of the Federal Rules  
8 of Evidence. *See United States v. Cook*, 608 F.2d 1175 (9<sup>th</sup> Cir. 1979) (en banc), *cert. denied*,  
9 444 U.S. 1034 (1980). Pursuant to Federal Rule of Evidence 404(b), defendant specifically  
10 requests notice concerning any evidence the government plans to introduce against him under  
11 Rule 404(b) and any prior or subsequent act relating to a specific instance of conduct which the  
12 government will attempt to introduce under Federal Rule of Evidence 608(b).

13 **C. Other Documents and Physical Evidence.**

14 Pursuant to Rule 16(a)(1)(C), defendant requests full discovery of all physical and  
15 documentary evidence and objects, including but not limited to all books, papers, documents,  
16 photographs, tangible objects, or copies or portions thereof which the government intends to  
17 introduce as evidence in its case-in-chief, or is material to the preparation of the defense, or was  
18 obtained from the defendant or which the government claims belong to the defendant.

19 **D. Scientific Reports and Examination.**

20 Pursuant to Rule 16(a)(1)(D), defendant requests full discovery of all scientific tests or  
21 experiments and results of physical or mental examinations which are material to the defense or  
22 are to be used as evidence by the government at trial. The government must also give the  
23 defense adequate notice of the use of the scientific tests or expert witnesses in order that the  
24 defense has "adequate time to obtain an expert to assist him in attacking the findings of the  
25 government's . . . expert." *United States v. Barrett*, 703 F.2d 1076, 1081 (9<sup>th</sup> Cir. 1983).

26 **E. Witness Discovery.**

27 Defendant requests disclosure of any evidence that any prospective witness is under  
28 investigation by federal, state or local authorities for any criminal or official misconduct. *United*

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1 *States v. Chitty*, 760 F.2d 425 (2<sup>nd</sup> Cir.), *cert. denied*, 474 U.S. 945 (1985). Defendant also  
 2 requests any evidence that any prospective witness is biased or prejudiced against the defendant,  
 3 or has a motive to falsify or distort his or her testimony. *Pennsylvania v. Ritchie*, 480 U.S. 39  
 4 (1987) *United States v. Strifler*, 851 F.2d 1197 (9<sup>th</sup> Cir. 1988), *cert. denied*, 489 U.S. 1032  
 5 (1989); *United States v. Alvarez-Lopez*, 559 F.2d 1155, 1157 (9<sup>th</sup> Cir. 1977).

6 The defendant requests any evidence that any prospective government witness has  
 7 engaged in any criminal act, whether or not resulting in a conviction, and whether any witness  
 8 has made a statement favorable to the defendant. *See* FED. R. EVID. 608, 609 and 613. Such  
 9 evidence is discoverable under *Brady v. Maryland*, 373 U.S. 83 (1963). *See Strifler*, 851 F.2d  
 10 1197 (witness's prior record); *Thomas v. United States*, 343 F.2d 49 (9<sup>th</sup> Cir. 1965) (evidence  
 11 that detracts from a witness's credibility).

12 Defendant further requests that the government review for impeachment material the  
 13 personnel files of any agents it intends to produce as witnesses. *United States v. Henthorn*, 931  
 14 F.2d 29 (9<sup>th</sup> Cir. 1991). *Henthorn* requires that all material information should be disclosed, and  
 15 any information which is arguably material should be submitted to the Court for *in camera*  
 16 examination. *Id.* at 30-32.

17 Defendant requests disclosure of any evidence, including any medical or psychiatric  
 18 report or evaluation, tending to show that any prospective witness's ability to perceive,  
 19 remember, communicate, or tell the truth is impaired; and any evidence that a witness has ever  
 20 used narcotics or other controlled substance, or has ever been an alcoholic. *Strifler*, 851 F.2d  
 21 1197; *Chavis v. North Carolina*, 637 F.2d 213, 224 (4<sup>th</sup> Cir. 1980); *United States v. Butler*, 567  
 22 F.2d 885 (9<sup>th</sup> Cir. 1978).

23 Defendant also requests the name and last known address of each prospective government  
 24 witness, *see United States v. Napue*, 834 F.2d 1311 (7<sup>th</sup> Cir. 1987); *United States v. Tucker*, 716  
 25 F.2d 583 (9<sup>th</sup> Cir. 1983) (failure to interview government witnesses by counsel is ineffective);  
 26 *United States v. Cook*, 608 F.2d at 1181 (defense has equal right to talk to witnesses), and the  
 27 name and last known address of every witness to the crime or crimes charged (or any of the overt  
 28 acts committed in furtherance thereof) who will *not* be called as a government witness, *United*

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1 *States v. Cadet*, 727 F.2d 1469 (9<sup>th</sup> Cir. 1984).

2 **F. Preservation of *Jencks* Act Material.**

3 Defendant requests that the government preserve all rough notes and other materials  
4 arguably subject to production under Title 18, United States Code, Section 3500 (the “*Jencks*  
5 Act”) or under Rules 12(I) or 26.2. The government is placed on notice that all such materials  
6 will be requested by the defense concerning any government witness called to testify at trial, and  
7 all law enforcement witnesses who testify, regardless of by whom called, at all pretrial  
8 proceedings.

9 The government is also placed on notice that the defense will seek *in camera* review of  
10 all such materials which the government claims are not subject to production, and that such  
11 material must be preserved. *See United States v. Harris*, 543 F.2d 1247 (9<sup>th</sup> Cir. 1976).  
12 Recognizing that such materials, with the exclusion of materials producible under *Brady v.*  
13 *Maryland*, 373 U.S. 83 (1963), are not subject to production until the close of the witness’s  
14 testimony, the defense nonetheless asks that such material be disclosed reasonably in advance  
15 of the relevant hearing so as not to unduly delay the proceedings.

16 **G. Disclosure Concerning Informants and Percipient Witnesses.**

17 Defendant requests discovery concerning all informants who were percipient witnesses  
18 to any of the counts alleged against him, or who otherwise participated in the illegal conduct  
19 alleged against the defendant, and disclosure of each informant's identity and location, as well  
20 as disclosure of the existence of any other percipient witnesses unknown or unknowable to the  
21 defense. *See Roviario v. United States*, 353 U.S. 52, 61-62 (1957); *United States v. Ordonez*, 737  
22 F.2d 793, 808 (9<sup>th</sup> Cir. 1984). The identity and whereabouts of all informants should be  
23 disclosed so that defendant has the opportunity to investigate the credibility and background of  
24 the informant prior to trial and to possibly call the informant as a witness at trial. Furthermore,  
25 defendant specifically requests that the government produce the confidential informants. The  
26 government has an obligation to accomplish this or show that despite reasonable efforts, it was  
27 not able to do so. *United States v. Hart*, 546 F.2d 798, 799 (9<sup>th</sup> Cir. 1976) (en banc).

28 Furthermore, any information derived from informants that exculpate or tends to  
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1 exculpate the defendant, or furnishes sentencing mitigation must also be disclosed. In addition,  
 2 the government must also disclose any information indicating bias on the part of an informant,  
 3 generally known as *Giglio* material, *see Giglio v. United States*, 405 U.S. 150 (1972), and the  
 4 line of cases concerning discovery of material bearing on informant credibility. Such  
 5 information would include what, if any, inducements, favors, or payments were made to  
 6 informants to obtain his or her cooperation with the government.

7 .  
 8 **H. Other Exculpatory Evidence.**

9 Pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, the defendant moves  
 10 that the Court order the government to immediately disclose all evidence in its possession  
 11 favorable to her on the issue of guilt or to punishment. The defendant requests the Court order  
 12 the government to make a diligent effort to ascertain what evidence it has or might reasonably  
 13 discover which would create a reasonable doubt as to the defendant's guilt in the mind of the  
 14 trier of fact, and to surrender any such evidence to the defendant immediately upon its discovery.  
 15 *Hilliard v. Spalding*, 719 F.2d 1443 (9<sup>th</sup> Cir. 1983) (government suppression of possible  
 16 exculpatory evidence denied defendant due process; no showing of prejudice required); *United*  
 17 *States v. Gardner*, 605 F.2d 1076 (9<sup>th</sup> Cir. 1980).

18 This request includes any information that may result in a lower sentence under the  
 19 United States Sentencing Guidelines, including any cooperation or attempted cooperation by the  
 20 defendant, as well as any information that could affect any base offense level or specific offense  
 21 characteristics under Chapter Two of the Sentencing Guidelines. Also included in this request  
 22 is any information relevant to a Chapter Three adjustment, a determination of the defendant's  
 23 criminal history, or any other application of the Sentencing Guidelines.

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1 **III.**

2 **MOTION TO RESERVE FURTHER MOTIONS**

3 The defense has not received any discovery in this case and needs additional time to  
4 receive and review the discovery anticipated in this case. The review of this discovery may  
5 necessitate the filing of further motions. Accordingly, defendant respectfully requests permission  
6 to file other pretrial motions which become necessary following review of all the discovery.

7 **III.**

8 **CONCLUSION**

9 For the foregoing reasons, defendant Nathaniel Gregory Williams, by and through his  
10 counsel, Stephen P. White, respectfully requests that this Court grant his motions for discovery  
11 and to file further motions.

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13 Dated: January 11, 2008

Respectfully submitted,

14  
15 *s/Stephen P. White*  
16 STEPHEN P. WHITE  
17 Attorney for Defendant  
18 Nathaniel Gregory Williams  
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